Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Section 224 of the Act;	)	
Amendment of the Commission's Rules and	)	WC Docket No. 07-245
Policies Governing Pole Attachments	)	

DECLARATION OF VERONICA MAHANGER MACPHEE

I, Veronica Mahanger MacPhee, hereby declare the following:

INTRODUCTION

1. I am the owner of Mahanger Consulting Associates (MCA), through which I provide consulting services to telephone and cable television companies throughout the United States and Canada. My clients have included small, medium and mid-sized independents as well as several of the regional Bell operating companies. I provide advice with respect to joint use of utility poles and conduit and related matters, including the historical evolution of joint use and joint ownership of poles, and associated rate methodologies. My experience with utility pole issues spans almost 25 years.

2. I was graduated from Temple Buell College in Denver, Colorado (previously Colorado Woman's College, now absorbed into Denver University) with a Bachelor of Arts degree, from the University of Calgary Faculty of Law in Calgary, Alberta, Canada with a Bachelor of Laws, and from Duke University School of Law in Durham, North Carolina with a Master of Laws. While a student at Duke Law and then following graduation, I served as Assistant Dean of the School of Law from

January 1980 until May 1983. I was admitted to the North Carolina State Bar in March 1983.

3. Commencing in December 1984, after a brief stint in private practice, I worked as an attorney for GTE South in Durham, North Carolina and had responsibility for GTE South's agreements for the placement and maintenance of its outside plant facilities in the eight southeastern states in which it operated, including joint use agreements with power companies for the joint use of poles and conduit, cable television pole and conduit license agreements, public and private licenses and easements, and later, outside plant (OSP) and central office equipment (COE) engineering and construction contract labor agreements. Since leaving GTE in June 1989, I have owned and operated MCA.

4. The purpose of my Declaration is to explain the origination and evolution of "joint use" agreements. My Declaration also addresses the current methodologies employed by the Federal Communications Commission (Commission) in establishing maximum pole attachment rates and suggests modifications to these methodologies.

JOINT USE AGREEMENTS

5. Historically the term "joint use" referred to shared use of a utility pole by the early telephone companies, now known as the incumbent local exchange carriers (ILECs), and either the investor-owned electric companies or the municipal and rural electric cooperatives (ELCOs). Traditionally these two industries shared a single pole in their common operating areas for placement of their respective aerial facilities and related equipment. There were typically two types of agreements that governed such shared pole use: (i) "space rental" agreements, where one utility used a pole owned by the

other utility, and (ii) "joint ownership" agreements, where the two companies owned an agreed percentage of each jointly utilized pole. While it is often applied to any shared use of a utility pole, I use the term "joint use" to apply to ILEC/ELCO space rental agreements, as distinct from "joint ownership" agreements. Also, joint use agreements should be distinguished from license agreements by which entities that typically do not own poles obtain access to utility poles.

6. Joint pole use by ILECs and ELCOs began in the 1920s. The objective was to minimize costs and maximize savings by using one pole jointly instead of two separate poles for the placement of each of the two companies' facilities, thereby allowing both entities to avoid unnecessary investment that could otherwise result in higher rates to their customers. This practice had added aesthetic and safety benefits of minimizing the proliferation of utility poles across the country. The principle underlying joint pole use was straightforward: fair and reasonable allocation of the costs and benefits associated with shared use among users of a "standard" utility pole, typically identified in early joint use agreements as a 35-foot Class 5 pole made of wood.

7. The respective allocations of responsibility for costs between the two parties to early joint use agreements often had to be derived or inferred from the respective pole rental rates the parties paid, since the agreements were – and often still are – silent on any methodology for allocating such costs. For example, if the parties paid the same "reciprocal" pole rental rate, the effective result was that the parties had equal responsibility for the cost of joint use. Other rate ratios were 45 percent/55 percent, or 40 percent/60 percent. In 1949 the Rural Electrification Administration published a

formula, which was refined in 1954, to govern agreements between ILECs and electric cooperatives, which produced initial rental rates of $1.30 per pole for the ILEC and $2.00 per pole for the cooperative, a rate ratio of 39 percent for the ILEC and 61 percent for the ELCO.

8. At the time many joint use agreements were entered into by ILECs and ELCOs, each of those entities owned or expected to own a proportion of the utility poles subject to joint use that was roughly comparable to the ratio of the rates in their joint use agreements. When this pole ownership ratio was maintained, the parties were in ownership parity, and generally no exchange of net rental occurred. As discussed below, however, there is no longer parity of pole ownership, as ELCOs now own the vast majority of joint use poles.

9. For the most part, joint use agreements address the same issues – standard pole height, the allocation of pole space, the division of capital costs for the placement of poles, rental payments for occupying the owner's pole, and the sharing of liability. However, there are always variations from agreement to agreement, some of which are significant. The variations are a function of the circumstances existing when an agreement was initially signed or most recently renegotiated, and should reflect changes in both parties' interests and concerns regarding joint pole usage.

10. Increasingly, however, joint use agreements are coming to reflect the position of power ELCOs enjoy with respect to pole ownership. Because they own the vast majority of the poles, ELCOs can and do dictate pole attachment rates to their most lucrative captive market on those poles – the ILECs. Despite variations in joint use agreements, the vast majority of agreements with which I am familiar suffer

increasingly from the same shortcomings – inequities with respect to the allocation of costs that have increased over time, are attributable to fundamental changes in pole usage, and fail to reflect the changing reality of joint use in today's marketplace.

11. First, there have been fundamental changes in the space requirements of the electric and telephone industries. In the 1920s and 1930s when joint use agreements were first introduced, the space requirements of the ILECs and ELCOs were the same or nearly the same for the open (un-insulated) copper wire they both then used. In typical early joint usage agreements, ILEC and ELCO pole space allocations for the placement of their respective cable facilities were either nearly equal at 3 feet and 4 feet respectively, or equal at 3 feet to each party, on a 35-foot two-party pole. The 40 percent/60 percent to 50 percent/50 percent rental rates were in line with the two parties' relative pole usage.

12. But improvements in efficiency achieved by the two industries have been tied directly to space usage, with dramatic change – in opposite directions – in their respective pole space needs.

13. Over time, to provide the increasingly higher voltages required to serve their customers, ELCOs went from "Delta" construction (i.e., without a neutral wire) to a "Y" configuration (i.e., with a neutral wire, the function of which, as the term suggests, is to keep the system's varying voltage levels in relative equilibrium). The latter method of construction required more pole space. ELCOs also needed greater numbers of increasingly larger transformers to step down the higher voltages required to serve their ever-expanding customer base, and their space usage requirements expanded greatly as a consequence. The effective pole space utilization by ELCOs

has increased from 4 feet in the 1970s, to anywhere from 8 feet to 12 feet. At the same time, pole heights have risen from 35 feet to 40 feet or 45 feet to provide ELCOs with additional space to accommodate their facilities.

14. By contrast, while the ELCOs' space usage requirements on poles have increased, the reverse has happened with telephone companies. As ILECs went from open copper wire to insulated fiber optic cable with infinitely greater pair capacity for serving their customers, their space usage contracted and is continuing to do so. Today, for example, ILECs such as AT&T often need only one to two feet of space on utility poles for their wireline facilities.

15. Secondly, there have been fundamental changes in the number of parties occupying joint use poles. While historically only the ILEC and the ELCO occupied a utility pole, today poles also are occupied by cable television companies (CATV), wireless carriers, and other telecommunications carriers, such as competitive local exchange carriers (CLECs). With the growth and technological innovation in the industry, the number and type of communications occupants of utility poles continues to proliferate, with even power companies getting into the communications act by carrying broadband over their power lines. In addition, utility poles also are used by local municipalities for the placement of streetlights, and sometimes by non-telecommunications carriers to carry privately owned facilities. Since street-light brackets are often located in the separation space on a pole, the ELCO derives income from its use of this space.

16. The Commission has recognized the increased number of entities accessing utility poles. It has determined that, subject to rebuttal by means of actual data, the use and

application of its rate methodology will presume that there are five users on a joint pole in "urbanized" settings (population 50,000 or higher), and three users in "non-urbanized" settings (population less than 50,000). 47 C.F.R. § 1.1417(c).

17. In renegotiating their joint use agreements with ILECs, ELCOs insist on preserving the myth that there are only two parties on a pole whose usage and pole ownership are relatively similar. Both the costs and the benefits of a joint use pole today - including its total usable and unusable space - are still ostensibly allocated just to the ILEC and the ELCO on the pole. The inevitable result of the preservation of this historical two-party fiction is that the ILEC continues to be required to pay for the entire 3 feet of usable communications space on a joint use pole, space that was once preserved for its exclusive use. However, when a CATV or CLEC attaches to a joint use pole, the attachment invariably is placed within the 3 feet of space already paid for by the ILEC. This is a consequence of the traditional or historical configuration of space on a pole. Measured down from the top of a 35-foot pole, the ELCO initially occupied 4 feet for its electric facilities, followed by a safety separation of 3 feet 4 inches, followed in turn by 3 feet of space reserved for the ILEC's communications facilities. It is in these 3 feet of space once reserved for ILEC use that CATV and new telecommunications carriers have been located. As a result, for additional attachments on a joint use pole owned by an ELCO, the ELCO receives additional compensation for space on the pole for which the ILEC is already paying. At the same time, the ILEC receives no corresponding benefit or reduction in the amount it has to pay as a result of a CATV or CLEC attachment, even though the additional attachment reduces the ILEC's proportional usage of the pole. The presence of both a

CATV and a CLEC on a joint use pole effectively reduces an ILEC's once-guaranteed usable space on a joint pole from 3 feet to one foot.

18. This historical configuration is now obsolete in more ways than one. As between the ELCOs and the ILECs, the need for pole space for the attachment of cables and related equipment has changed, and it has done so in diametrically opposite directions. The cable attachments of ILECs today occupy a mere 1 foot to 2 feet of pole space, which is a reduction of either two-thirds or one-third from their traditional 3 feet. On the other hand, as joint use agreements are renegotiated, ELCOs have generally insisted on allocations of anywhere from 8 feet to 12 feet for their cables and equipment, which is double or more than double their traditional space allocation.

19. Despite these fundamental space revisions (a drastic increase in ELCO space and equally drastic decrease in ILEC space), and the very relevant occupancy of traditional ILEC space by proliferating new users, ELCOs refuse to entertain any reasonable corresponding adjustment in the ILEC allocation of responsibility for joint use pole costs and resulting rental rates.. For example, assume a joint use agreement by which the ILEC and the ELCO are still each responsible for 50 percent of the annual pole costs of a pole owned by the ELCO. Applying the Commission's assumption of three additional attaching entities in an urbanized setting (say, a CATV and two CLECs), the ELCO would be entitled to recover the following percentages of its costs: 7.4 percent from the CATV, and 11.2 percent from each of the CLECs (as explained more fully in Exhibit VMM-1). Under this scenario, an ELCO would be receiving a combined offset of 79.8 percent of its annual carrying cost of a pole (7.4 percent CATV + 11.2 percent CLEC + 11.2 percent CLEC + 50 percent ILEC),

making its own effective contribution 20.2 percent of its annual carrying costs. By contrast, the ILEC is left to defray 50 percent of the pole's annual costs, even though it is now using approximately the same amount of space as its competitors. This is some four and a half times the rate for that space paid by the CLECs on the pole, and nearly seven times the rate paid by the CATV. There is an alternative way to look at this scenario. For the payment terms of this joint use agreement to hold true - that is, for the ELCO and ILEC to each pay 50% of the cost of a joint use pole - the ELCO must be recognized to be effectively collecting 129.8% of the cost of the pole (7.4 percent CATV + 11.2 percent CLEC + 11.2 percent CLEC + 50 percent ILEC + 50% ELCO). This is not just inherently unfair and unreasonable; it also leaves the ILEC demonstrably disadvantaged by comparison with other communications carriers. It is simply not competing on a level playing field.

20. In the modern day pole usage configuration, ILECs also are disadvantaged with respect to the type of pole that is now suitable for joint use, that is, a pole of sufficient height and strength to accommodate the ELCO's expanded facilities as well as new CATV and CLEC users. It is no longer possible to accommodate the growing number of pole users on the 35-foot standard pole of early two-party joint use. Consequently, ILECs are being asked to help pay for both the initial construction and the recurring annual carrying costs of the taller poles that are now necessary for the purpose of accommodating additional attachers, from which the ILECs derive no benefit.

21. Third, the relative ownership of joint use poles has shifted dramatically. Whereas ILECs formerly owned a significant portion of joint use poles, that is no longer the case. My experience has been that across the country – with the problem more acute

both with respect to certain phone companies and in certain areas of the country – the relative pole ownership distribution is now 25 to 30 percent ILEC ownership as compared with 70 to 75 percent ELCO ownership.

22. The current imbalance in ownership of joint use poles is due to a number of factors stemming from the differing nature of the telecommunications and electric industries that have combined to operate to the ILECs' detriment.

23. For example, when a new subdivision is under construction, the developer usually contacts the electric company early in the process (and typically before contacting the telephone company) in order to ensure the delivery of electric service. As a result, electric companies are often first to make preparations to serve a new development, which entails the installation of electric company-owned poles at the site. This same phenomenon occurs when a utility pole is damaged and needs to be replaced – because of the real or perceived primacy of electric service, certainly from a safety or liability perspective, the electric company is typically the first utility on the scene, giving the ELCO the first opportunity to install its own poles. In addition, following natural disasters involving significant number of poles that require replacement, electric companies are the first to clear an area to ensure the safety of citizens and utility workers, and, as a result, install their own poles in replacement of any poles owned by the telephone companies. ELCOs have also been known to set taller poles beside existing ILEC poles, which results in the ILEC's having to transfer its facilities to the new ELCO poles and losing ownership of its own poles – a practice known as overbuilding.

24. It is also quite possible that because their highly energized electrical facilities are inherently dangerous, ELCOs may prefer to minimize their potential exposure to liability for injury to the public by maintaining ownership of and therefore control over joint use poles. It has been my experience that when presented with an opportunity to sell poles to ILECs to reduce a pole ownership imbalance, ELCOs resist doing so.

25. ELCOs' need for expanded pole space to accommodate their facilities also has contributed significantly to the imbalance in pole ownership. Because the historical evolution of the two industries has been such that the need of the ELCOs for more pole space has increased dramatically, while the ILECs' space usage has actually decreased, the ELCOs have been the ones occasioning – and conducting – expensive pole change outs to get more space on taller poles. This often happens at the expense of the ILECs. Depending on the terms of the underlying joint use agreement, an ILEC may be called upon to supply the pole at its own cost, or to defray a portion of the capital up-front cost of the poles needed by the ELCO. If the ELCO owns the pole, the ILEC also has to pay annual rental on the same poles it has helped to purchase.

26. In fact, a pole ownership imbalance has its own snowball effect, so to speak, in that it tends to spur further imbalance. One express objective of joint use historically has been to avoid mixed ownership of pole lines. Therefore, inter-set poles needed by a joint user, perhaps for clearance, are typically placed and owned by the owner of the line, but are paid for by the party needing the pole. This is a situation where an ILEC

would not just pay for the capital cost to set a pole, but would then also pay annual rental for the pole it has purchased.

27. There is yet another negative impact of all this on ILECs. Since poles last more than 40 years once placed in the ground (barring early demise due to some unfortunate occurrence), the wood poles ILECs own are shorter, older and have a lesser value for application of the Commission's pole rental rate formulas, which in turn means that the rates they produce for application to additional parties on their poles, such as CATVs and CLECs, are considerably lower than the rates produced by the taller, far more expensive poles needed by ELCOs, some of which are made of costly materials like steel and concrete. I will discuss the various implications of the disproportionately greater ELCO pole construction requirements and costs in the next section.

28. These trends that have occurred through no fault of the ILECs – the change in the space requirements of the electric and telephone industries, the increase in the number of attaching parties on utility poles, and the dramatic increase in ELCO-owned joint use poles – make the traditional allocation to the ILEC of 40 percent to 50 percent of the cost of a pole under most joint use agreements unwarranted and unsustainable.

29. While the rates in many joint use agreements are subject to periodic renegotiation, ELCOs have little incentive to negotiate pole rental rates that are mutually beneficial to both the electric company and the telephone company. I have been directly involved in the analysis, revision and renegotiation of a multitude of joint use agreements and their associated rates and/or rate structures since 1984, and in my experience, ELCOs typically refuse to discuss, let alone to update, the obsolete space

or cost allocation percentages to reflect more accurately actual pole usage. ELCOs also typically decline to discuss, much less to incorporate, any offset in their pole costs generated by the income they receive from the proliferating number of users seeking to attach to utility poles today. Instead, ELCOs simply continue to demand that ILECs continue to defray 40 percent to 50 percent of their annual pole carrying cost of increasingly taller poles, based on the demonstrably outdated premise that joint use poles still carry attachments of only two parties occupying 3 to 4 feet of space each on 35-foot poles.

30. ILECs have relatively little bargaining power in re-negotiating a joint use agreement to reflect today's market realities more accurately. Because ILECs own relatively few joint use poles and have limited options to relocate their facilities from ELCO poles, ILECs often find themselves at the mercy of ELCOs during any renegotiation process. This disparate bargaining power is exacerbated by the historic interpretation excluding ILECs from the protection of "just and reasonable" pole attachment rates under 47 U.S.C. § 224(b)(1), which is an issue the Commission is examining in this proceeding.

POLE ATTACHMENT RATES

31. In 1978, Congress enacted 47 U.S.C. § 224, an amendment to the Communications Act of 1934, which established a range of minimum and maximum pole attachment rates that existing pole-owning utilities could charge CATVs. In the Telecommunications Act of 1996, Congress acted again, this time establishing a different range of minimum and maximum pole attachment rates for telecommunications carriers other than the ILEC (while retaining the CATV

maximum rate formula). Under both of these enactments, the minimum rate for both CATVs and non-ILEC telecommunications carriers was the same – the incremental cost to the pole owner of accommodating the attacher's cable on its pole, although the Commission has not mandated how this incremental cost should be calculated. However, the two maximum rates that were prescribed for CATVs in 1978 and retained in 1996 (the cable or CATV rate) and for telecommunications carriers other than the ILEC in 1996 (the telecom or CLEC rate) were quite different, and it is the maximum rates that pole owners invariably charge.

32. Specifically, pursuant to each of these Congressional mandates, the Commission adopted rules setting out the formulas to be used to calculate the maximum permissible cable and telecom pole attachment rates. The two Commission maximum rate formulas are different space-based formulas by which a percentage of a pole's cost is allocated to an attaching entity based on its use of pole space. The formulas employ the same methodology or mathematical equation, in that in each case the percentage of space use is applied to the "fully allocated" annual cost to a pole owner of owning and carrying its average pole, developed according to a pole cost mechanism set out by the Commission, and resulting in an annual rental rate payable by the attaching entity to the pole owner. The Commission's mechanism for developing the pole owner's fully allocated average carrying cost of a pole is the same in both formulas, but since the usage calculations for sharing that cost are different in the two formulas, the resulting cable rate and telecom rate are different.

33. Expressed in its simplest form, the Commission's pole rental methodology or mathematical equation is ***EPC*** *times* ***ACC*** *times* ***SU*** *equals* ***Pole Rental Rate***. (See

attached Exhibit VMM-1: FCC Maximum Rate Methodology and Associated CATV and CLEC Formulas, which is provided here for ease of reference.) The Commission defines the ***EPC*** or "Embedded Pole Cost" as the pole owner's historical average "embedded" or in-place cost of a "bare" pole (that is, a pole exclusive of non-pole-related hardware or "appurtenances"). The ***ACC*** is the "Annual Carrying Charge," the percentage of this historical average cost a pole owner incurs annually to own or "carry" its average pole, composed of the sum of five annually recurring expenses – maintenance, taxes, administration, depreciation and cost of capital. ***EPC*** *times* ***ACC*** is considered a pole owner's "fully allocated annual cost" to own and carry a pole. The ***SU*** or "Space Usage" component of the equation is the percentage of a pole owner's ***EPC*** *times* ***ACC*** that is allocated to a non-pole-owning entity on the pole, such as a CATV or telecommunications carrier other than an ILEC, based on the non-owner's fair and reasonable share of both the usable and the unusable space on an average joint pole, and taking into account all attaching entities on the pole.

34. There are two versions of this equation – one of which is the formula used to establish the cable rate, the other the formula used to establish the telecom rate (see Exhibit VMM-1). Under both versions, the pole rental rate is the historic average embedded pole cost multiplied by the pole's annual carrying charge multiplied by the space used and unused by the attacher. The ***SU*** component, however, is calculated differently in the CATV and CLEC formulas.

35. The cable maximum rate formula is based on the allocation of the average annual carrying cost of *both* the usable and the unusable space on a pole to a CATV company in direct proportion to its allocation of the pole's usable space. A CATV

pays 1/13.5 of the pole's usable space, and 1/13.5% of the pole's unusable space, for a total of 1/13.5% of the whole pole and its associated cost. The telecom maximum rate formula is based on the allocation of the average annual carrying cost of the pole's usable space in direct proportion to its allocation of such usable space, and of *two thirds* of the pole's non-usable space in proportion to the number of attaching entities on the pole.

36. The current pole attachment regulatory landscape – two different formulas applied selectively to only some pole users, leaving others without a means of redress – does not make sense from a competitive or policy standpoint. Furthermore, there are fundamental problems in the manner by which the current formulas are applied that the Commission should promptly address.

37. First, the Commission's pole attachment formulas are not consistent. For example, the first component of the Commission's current rate methodology – the historical average embedded cost of a pole – permits a pole owner to include all its poles in calculating average pole costs, no matter how tall the poles might be or how much usable and non-usable space is actually available on them. At the same time the third component of the methodology – the historical average embedded pole costs and annual carrying costs allocated to non-pole owners – considers only 35- and 40-foot poles, and the space actually available on them, to calculate a pole user's space usage factor. This is neither consistent nor fair. The pole owner's average in-place distribution pole cost should reflect and be consistent with the third component of the formula, the allocation of such pole cost based on space usage.

38. Second, the Commission should streamline its pole attachment methodology and assumptions for allocation of cost by distributing space on a 40-foot standard jointly occupied pole based on an assumption of four users on the pole. This recommended allocation better reflects actual conditions of pole usage. Currently the Commission's methodology utilizes a blended 37.5 foot pole based on combining a 35-foot and a 40-foot pole, which assumes that these pole heights are weighted equally in jointly used poles. A 35-foot pole was the standard pole in early joint use agreements between ELCOs and ILECs, back when these two parties were using 3 feet and 4 feet on a pole. It is clear that 35-foot poles cannot accommodate 3 to 5 or more pole users in today's joint use context. Consequently, their inclusion in the Commission's methodology should be abandoned. In addition, assuming four users on the pole promotes efficiency and standardization by combining the Commission's two assumptions on this issue - that there are five users in urbanized settings and three users in non-urbanized settings.

39. Third, each pole user's space and associated cost allocation factor for both the usable and the non-usable space on the pole would be calculated by expressing its allocated usable space as a percentage of the pole's total usable space. The Commission has determined that there are 16 feet of usable space on a 40-foot pole. The usable space allocated to a CATV or a CLEC under the Commission's methodology is 1 foot each. The ILEC on the pole utilizes 1 foot to 2 feet, or an average of 1.5 feet. This means that the combined usable space dedicated to these three parties on the pole is 3 feet to 4 feet, leaving the remaining 12 feet to 13 feet of usable space available on a 40-foot pole for the exclusive use of the ELCO on the pole. The only way to give recognition

to this disparity of usage by one of the four parties on the pole is to have each pole user responsible for a percentage of the cost of the entire pole that reflects its specific allocation of the usable space.

40. Fourth, to ensure that the cost that is shared by a pole user reflects and is consistent with the benefit it is actually receiving, only the net average cost of a standard 40-foot Class 5 wood pole should be considered in calculating pole attachment rates. The Commission's current formulas include the cost of *all* poles in calculating pole cost, but there is no logical, fair or reasonable basis for requiring communications companies occupying 1 foot of space on a pole to help defray the cost of 50-, 60-, 70-foot or even higher poles, or the cost of steel, fiberglass or concrete poles, or the cost of Class 1 through Class 4 poles, all of which are set by electric companies to serve their own need for excess height and strength. Only the composite 37.5 foot pole - an equally weighted blend of a 35- and 40-foot pole - is used in the current formulas to determine a pole User's cost allocation percentage (see Exhibit VMM-1). The result of this inconsistent treatment of space versus cost is that under these formulas renters are not just required to pay for the cost of their fair share of the usable and unusable space on Owner's 35- and 40-foot poles, as the formulas would seem to dictate. In fact, they are also paying for these same percentages of the excess usable and unusable space on all of Owner's poles that are taller than 40 feet. This is neither fair nor reasonable. Since this is usable and unusable space that is dedicated to the pole Owner's exclusive use, and from which renters derive no benefit, they should not be required to subsidize its cost.

41. The ELCO investment not just in distribution poles, but also in towers and fixtures, is reflected in the FERC electric Account, Poles, Towers and Fixtures, prescribed in Subchapter C - Accounts, of the Federal Power Act, Part 101, Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject to the Provisions of the Federal Power Act. The investment in ILEC distribution poles is reflected in the Telephone Account 2411 of the Uniform System of Accounts (USOA) prescribed in Section 32.2411 (47 C.F.R. § 32.2411) of the Commission's rules. Each pole owner's total investment in these accounts should be adjusted to reflect the true cost of standard 40-foot wood poles only, as the only appropriate pole type and height actually needed to accommodate an owner's pole lessees. If these costs are not tracked separately by a pole owner, a factor should be applied to each owner's pole line account that either reduces or increases investment as required. This adjustment is necessary because of the vast height and strength disparity between the poles owned by ELCOs and those owned by ILECs. Electric Account 364 also includes cost associated with towers that should be excluded, since towers do not often, if ever, have attachments. The Commission must modify the inputs to any formula adopted in this proceeding to the extent necessary to ensure that pole attachers are not subsidizing an ELCO pole owner by paying for pole costs from which attachers derive no benefit. The converse is also true with respect to ILECs, whose average poles are typically shorter than 40-feet. Their pole line accounts should be adjusted to reflect the true cost of the 40-foot Class 5 wood poles they are required to supply for joint use. To the extent that pole costs are not tracked by height, material type or

Class, a factor should be applied to the costs that are tracked in order to accurately reflect the cost of 40-foot Class 5 wood poles.

42. Fifth, the Commission needs to amend the pole cost component of its methodology to remove the true or actual cost of non-pole-related fixtures or "appurtenances" from the cost of poles to arrive at bare pole cost. The Commission currently uses a rebuttable presumption that 15 percent of electric costs, and 5 percent of ILEC costs, are associated with fixtures. In my experience, where actual data exists, the electric percentage with respect to fixtures is typically far higher than 15 percent. Where ELCO pole owners track these costs separately, and have available actual data, they should be prohibited from employing the Commission's 15 percent presumption simply because it is lower than their actual costs and therefore produces higher rates. Accordingly, the Commission should require that the actual cost of fixtures be removed in the formula if in fact these costs are tracked separately. If it becomes necessary to develop a presumed or reasonable percentage, the Commission should revisit this issue and establish a new percentage based on actual current data provided by the ELCOs.

43. Sixth, in order to prevent "double dipping," the Commission should ensure that contributions to a pole owner's capital costs, received in the form of reimbursements by other pole users for pole placements or change outs, are excluded from the pole owner's costs. The Commission articulated a prohibition against double dipping almost 30 years ago with respect to CATV pole attachment rates, when it stated: "...where a utility has been directly reimbursed by a CATV operator for non-recurring costs, including plant, such costs must be subtracted from the utility's corresponding

pole line capital account to insure that CATV operators are not charged twice for the same costs." Memorandum Opinion and Second Report and Order, *Adoption of Rules for the Regulation of Cable Television Pole Attachments*, CC Docket No. 78-144, FCC 79-308, 72 F.C.C.2d 59, ¶ 27 (May 23, 1979). This pronouncement by the Commission states the correct principle, but it is not just CATV companies that make such reimbursements. In the intervening 30 years since the principle was first articulated the number of entities occupying utility poles have proliferated well beyond the CATV companies added as pole users in the 1970s. Pole owners often receive contributions in aid of construction from other users of its poles, including ILECs. If such contributions in aid of construction have been paid to the pole owner but have not been credited back to its pole line account, as is required, then "double dipping" will occur. The Commission should reiterate its position on this issue and take any necessary steps to ensure that such contributions are being credited back to the pole line account.

44. Finally, the Commission should also revisit the second component of its rate methodology, the pole owner's annual carrying charge associated with its poles, to ensure that only annual expenses directly associated with a shared pole are included in calculating a pole attachment rate. A pole owner should not be allowed to include any costs that are exclusively related to the conduct of its own business, because costs incurred by a pole owner to maintain its own facilities or attachments on the pole are not appropriate to pass on to other pole users. As an example, electric companies should not be permitted to include any costs associated with the maintenance of their overhead electric facilities. These are costs that are specific to the electric enterprise,

and should not be passed along to other pole users. It is necessary to ensure that the expenses of carrying 40-foot wood poles reflect no conductor or other cable or facility-related expenses of the owner; no business or industry-related expenses of the owner; no right-of-way maintenance expenses of the owner; no recurring expenses already reimbursed by other pole users; and no other non-pole-related expenses of any sort, as more fully described below in paragraphs 44 and 45 of my Declaration.

45. The Commission's rules indicate the accounts of both ELCO and ILEC pole owners that are utilized to calculate rates under them. However, these accounts should be used only as a starting point and should not be utilized in their entirety in establishing rates unless and until all non-pole-related expenses have been removed. Many non-pole-related expenses that are specific to a pole owner's business enterprise, and that a pole user should clearly not be expected to subsidize, are included in these accounts.

46. For example, the Commission permits electric companies to develop the maintenance element for their annual carrying charge factor by representing the amount in their FERC electric maintenance Account 593, Maintenance of Overhead Lines (Major Only) as a percentage of the net amount in Accounts 364 (Poles, Towers and Fixtures), Account 365 (Overhead Conductors and Devices), and Account 369 (Services). But a review of the items that are booked to FERC Account 593 reveals that this account includes a multitude of non-pole related expenses that appear to constitute the greater proportion of this account, and that are inappropriate to pass on to a pole user. For instance, recurring annual right-of-way clearing and tree-trimming expenses are included in Account 593. These are not pole related expenses. Rather, they are costs incurred by ELCOs to keep their extensive electrical overhead facilities

clear of trees along their entire length, not just around their jointly used poles. These expenses should be excluded from the rental rate formula as unrelated to poles, because all electric companies must keep their rights-of-way clear to ensure the safety and insulation of its energized conductors. To ask other entities attaching to a pole to help defray these costs would require them to pay for expenses that these entities do not need and did not cause. Such costs that support the pole owner's electric business, and that do not materially benefit the pole's other users, should be backed out of these accounts, either by establishing the actual relevant pole-related costs in each case, or by utilizing factors similar to the Commission's fixtures or "appurtenances" factor where non-pole-related costs that should be deleted from the rate formulas need to be estimated.

47. The foregoing seeks to identify some major concerns arising out of the current pole attachment methodology for the Commission to consider. Through some accidents of history, ownership of the pole infrastructure has come to be concentrated in the hands of a single industry, the electric industry. As the nation's majority pole owners, ELCOs have an effective monopoly in this area. It is simply not possible for the rapidly expanding multitude of companies that require poles today for distribution of their services to each build new proliferating pole lines across the country. Consequently, the poles that exist are in the nature of a public trust. The Commission needs to ensure that attachment rates to attach to those poles are fair and reasonable, simple to calculate, an accurate reflection of the benefit of usage, and applied consistently to all pole users.

I declare under penalty of perjury that the foregoing is true and correct.

Veronica Mahanger MacPhee

EXECUTED: March 5, 2008

FCC Maximum Rate Methodology

and the Associated

CATV and Telecom (CLEC) Formulas

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Pole Rental Rate Equation Underlying the FCC Maximum Rate Methodology

ATTACHMENT RENTAL RATE PER POLE

=

EPC X *ACC* X *SU*

Where:

EPC = Owner's Average Historical Embedded "Bare" Pole Cost

ACC = Owner's Annual Carrying Charge Percentage for Poles

SU = User's Allocated Percentage of Space Usage and of *EPC* x *ACC* *

* *EPC* X *ACC* = Owner's annual cost of owning or "carrying" its average pole

FCC Determinations of CATV & Telecom (CLEC) Space Usage Components (Used for Allocation of Owner's Pole Cost)

Usable Space Allocations on a Joint Pole Based on FCC Presumptions:

	Non-Urbanized	Urbanized
CATV/Telecom/CLEC	1.0 ft	1.0 ft
CATV/Telecom/CLEC		1.0 ft
CATV/Telecom/CLEC		1.0 ft
ILEC[2]	2.0 ft	2.0 ft
ELCO	10.5 ft	8.5 ft
Total Usable Space	13.5 ft	13.5 ft

Resulting Space Usage Factor or *SU* applicable to Pole Owner's *EPC* X *ACC*:

CATV Formula

The ***SU*** Component of the CATV formula is derived by expressing a CATV User's 1 ft of allocated usable space as a percentage of the 13.5 ft of usable space available on the blended 37.5-foot joint pole, then applying it to Owner's total pole cost, that is, ***EPC X ACC***. Under the CATV formula, therefore, a user pays this percentage of both the unusable and the usable space on a pole, since the percentage is applied to the total pole.

CATV *SU*	**1/13.5**	**1/13.5**
	= 7.4%	**= 7.4%**

Telecom (CLEC) Formula

The ***SU*** Component of the Telecom (CLEC) formula is derived by adding a Telecom or CLEC User's 1 ft of allocated usable space to its equal share of 16 ft (2/3 of the pole's unusable 24 ft), based on the number of entities on the pole, and expressing the combined total usable and unusable space as a percentage of the total height of the blended 37.5-foot joint pole, then applying it to Owner's total pole cost, that is, ***EPC X ACC***.[3]

Telecom/CLEC *SU*	$\frac{1 + (16/3)}{37.5}$	$\frac{1 + (16/5)}{37.5}$
	$= \frac{1 + 5.33}{37.5}$	$= \frac{1 + 3.2}{37.5}$
	= 16.9 %	**= 11.2 %**

[2] Under today's pole usage conditions, 2 feet has become the maximum usable space that is utilized by ILECs.
[3] Under the Telecom formula the Owner absorbs the cost of the unallocated 1/3 or 8 ft of the unusable space.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Section 224 of the Act;	)	
Amendment of the Commission's Rules and	)	WC Docket No. 07-245
Policies Governing Pole Attachments	)	

DECLARATION OF PHILIP JACK GAUNTT

I, Philip Jack Gauntt, hereby declare the following:

1. I am employed by AT&T Operations, Inc.,[1] and my business address is One AT&T Plaza, 208 S. Akard, in Dallas, Texas. I have over thirty-three years of experience with AT&T and its affiliated companies, including extensive outside plant (OSP) experience. I began my career with Southwestern Bell in 1974 as a craftsman in the OSP environment and installed and maintained residential and small business telephone service and equipment. I have extensive experience with telephone installation and maintenance, special services installation and maintenance, toll facilities, facility testing, service assignments, and switching equipment.
2. During my employment at AT&T, I also have had experience in engineering design and had responsibility for the design, construction, and completion of telecommunications facilities, engineering both fiber and copper solutions for growth and upgraded facilities in urban, suburban and rural environments. I have designed joint-use aerial facilities and, as a trunk and toll engineer, have managed inter-office

[1] AT&T Operations, Inc. is a subsidiary of AT&T, Inc. that provides staff support to the various telephone operating subsidiaries of AT&T, Inc., which will hereinafter collectively be referred to as "AT&T."

facility projects. I have also developed long-range technical planning for network and outside plant facilities and have extensive experience in collocation process development, implementation, and project management.

3. I currently am employed as an Area Manager. In that capacity, I provide network regulatory support and structure access support for AT&T facilities in its 22-state region, including poles, conduit, manholes, and rights-of-way.

4. The purpose of my declaration is to provide an overview of AT&T's experience with joint-use poles. In particular, I describe AT&T's ownership of joint use poles and the practices of electric companies with respect to the pole attachment rates they demand from AT&T to attach to electric-owned poles. The information in my declaration is based on my first-hand knowledge or prepared by other AT&T employees at my request and under my supervision.

5. Electric companies own the vast majority of joint use poles in AT&T's 22-state region. For example, in the Midwest, Southwest, and Southeast regions of AT&T's service territory (the areas served by legacy Ameritech, SBC, and BellSouth, respectively), AT&T owns less than 24 percent of the more than 12 million joint use poles in place, with electric utilities owning the remaining 76 percent.

6. Because of the disparity in pole ownership and because AT&T's options to relocate its facilities from existing joint use poles generally are limited, electric companies often can and do require AT&T to pay excessive pole attachment rates. For example, in 2007 one electric company in AT&T's Southwest region demanded a more than 2000 percent increase in the rate for AT&T's pole attachments. Although AT&T refused to agree to this unreasonable rate hike, AT&T ultimately had to accede to a

700 percent increase in the pole attachment rate charged by this electric company. Similarly, in 2007, another electric company in AT&T's Southwest region recently demanded more than a 300 percent increase in the rate for AT&T's pole attachments, and the pole attachment rate the parties eventually "negotiated" represented a rate increase of more than 120 percent.

7. Because of their superior bargaining position, when joint use agreements are renegotiated, electric companies throughout the AT&T region frequently use the renegotiation process to demand substantial increases in pole attachment rates. Often times, AT&T has little choice but to agree to such demands in order to ensure continued access to electric-owned poles, which increases the cost of AT&T's services, including broadband.

8. For example, in AT&T's Midwest region, one electric company increased the pole attachment rates paid by AT&T by approximately 58 percent between 2001 and 2007, while another electric company increased AT&T's pole attachment rates by 25 percent in one year alone (2007).

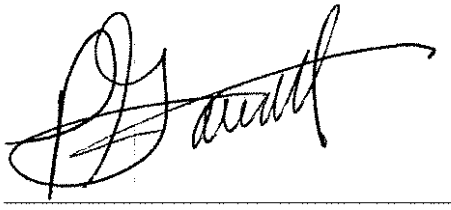
9. AT&T's experience in its Midwest region is not unique. For example, between 2000 and 2007, the pole attachment rates that AT&T paid to an electric company in AT&T's West region increased by more than 200 percent between 2000 and 2007. During this same time period, two electric companies in AT&T's Southeast region increased AT&T's pole attachment rates by approximately 60 percent and approximately 113 percent.

10. In certain instances, AT&T has refused to agree to electric company demands that AT&T pay excessive pole attachment rates. For example, an electric company in

AT&T's Southwest region terminated its joint use agreement with AT&T and demanded increased pole attachment rates that were 400 percent to 500 percent higher than the pre-termination rate. After several unsuccessful attempts to reach an agreement, AT&T elected to utilize alternate arrangements to place its facilities going forward, including placing its telecommunications facilities underground.

11. I also am aware of the widespread deployment of pole attachments on electric-company owned poles by other parties, such as cable operators, competing telecommunications carriers, wireless carriers, and other providers. These third-party attachments usually are placed in the space on joint-use poles reserved and paid for by AT&T, and electric companies frequently try to maximize the rents derived from these additional pole attachments. My experience in the telecommunications field leads me to believe that electric utilities view pole attachments as a line of business to generate revenue rather than as a cost recovery mechanism.

12. I declare under penalty of perjury that the foregoing is true and correct.



Phillip Jack Gauntt

EXECUTED: March 6, 2008